IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 14TH FEBRUARY 2007 / 25TH MAGHA 1928

CRL.A.No. 601 of 1999()

AGAINST THE ORDER OF ACQUITTAL DT.9.3.99 IN CC.172/1997 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM.

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APPELLANT / PETITIONER / COMPLAINANT

M.D.SEBASTIAN, MURINGAYIL HOUSE,
AYARKUNNAM KARA & VILLAGE,
KOTTAYAM TALUK.

BY ADV. SRI.SEBASTIAN THOMAS

RESPONDENTS/ RESPONDENTS ACCUSED AND STATE

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1. **V.C.SIMON, VETTUKATTIL HOUSE,**
   VETTILAPARA P.O.,
   VETTILAPARA KARA, AREEKKODU DESOM,
   ERANADU TALUK MALAPPURAM DIST.

2. **STATE OF KERALA, REP.BY THE PUBLIC**
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 14/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl. Appeal No.601 of 1999

Dated this the 14th day of February, 2007

Judgment

This appeal is filed against an order of acquittal. Notice was ordered on 17.9.1999, but, no steps were taken to issue notice. Without issuing notice to the accused, an order of acquittal cannot be reversed. Even otherwise, the complainant and the accused were uncle and nephew. The complaint was filed under section 138 of the Negotiable Instruments Act alleging that cheque issued to the complainant was dishonoured for insufficiency of funds. After analysing evidence in whole, the trial court found that PW1 admitted that he introduced PW1 for opening the account. The account was opened on 20.10.1992 and the amount was alleged to have been paid on 22.10.1992. Trial court suspected foul play because of the close relationship. The complainant also did not prove his capacity to raise Rs.25,000/-. There is no evidence to the transaction. According to the complainant, the money lent to the accused is from the sale proceeds of the property entrusted with V.C.Simon. That was also not proved. The complainant also did not adduce any evidence as to what purpose the money was borrowed even though accused is his own nephew. Considering the totality of evidence,

according to the accused, he never gone to South Indian Bank. There was a joint business with the accused and his nephew and that was discontinued. According to him, he has not deposited any money in the bank. In any event, it was not proved that the cheque was issued for a legally enforceable debt. I agree with the findings of the court below. Hence the appeal is dismissed.

J.B. KOSHY
(JUDGE)

vaa

J.B.Koshy J.

Crl. A. No.601 of 1999

Judgment

14-2-2007